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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,874	11/14/2001	Vadim R. Viviani	SAEG150.01CP1C1	1297
20995	7590	08/05/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			SLOBODYANSKY, ELIZABETH	
			ART UNIT	PAPER NUMBER
			1652	

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/993,874

Applicant(s)

VIVIANI ET AL.

Examiner

Elizabeth Slobodyansky, PhD

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.


The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1, 7 and 8.Claim(s) withdrawn from consideration: 3 and 9.

8. ☒ The drawing correction filed on 19 July 2004 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____



Elizabeth Slobodyansky, PhD
Primary Examiner
Art Unit: 1652

Continuation of 3. Applicant's reply has overcome the following rejection(s): 112, 1st paragraph enablement of claims 6-8, 10, 11; 112, 2nd paragraph of claims 6 and 11.

Continuation of 5. does NOT place the application in condition for allowance because: With regard to the 112, 1st paragraph new matter rejection, Applicants argue that "one of skill in the art would understand that the present specification's disclosure of a maximum of 549 nm in actuality means a maximum of approximately 549 nm, because absolute accuracy in the results of the measurement is effectively impossible in the art (Remarks, page 5). This is not persuasive because when a new term introduced by the amendment, particularly the one without clear definition, it must have support in the specification. Applicants' arguments appear to be contradictory because there is no need to indicate that a maximum is at approximately 549 nm if one of skill in the art would understand that "a maximum of 549 nm" means "a maximum of approximately 549 nm". It is noted that the specification indicates $\lambda = 549$ nm (e.g., pages 4-5). With regard to the 112, 2nd paragraph, Applicants argue that "the term "approximately" simply refers to that range of variation which is ordinarily to be expected as a result of the differences in measurement method or instrument employed" (page 6). This is not persuasive because "range of variation" is not defined in the specification and ordinarily is defined by an error of experiment, for example as $\lambda = 549 \pm X$ nm.